

Mr. SCOTT of Virginia: Madam Speaker, the possibility of terrorists or weapons of mass destruction being transported through border tunnels is frightening. The possibility of narcotics or trafficking victims being transported through tunnels is disturbing. And I have real concerns about tunnels being used for run-of-the-mill illegal immigration and to smuggle goods or merchandise.

But these things are already illegal. And the penalty for doing any of these things through a tunnel is already double what it would be if the unlawful activity had not made use of a tunnel.

When this bill, H.R. 4119, was in the Judiciary Committee, I commented on what I saw as the redundancies in the bill. We already have laws against constructing or financing a tunnel between the United States and another country. The penalty for violating the law is a fine and up to 20 years in prison. And we have laws against knowing, or recklessly disregarding, that land you own or lease is being used by someone else who is building a tunnel. The penalty for that is a fine and up to 10 years in prison.

H.R. 4119 adds attempts to the crimes already available to address border tunnels. Yet, I wonder how many cases there have been where a prosecutor was unable to prosecute someone for attempting to construct a tunnel under the current border tunnel law but would be able to under H.R. 4119? For U.S. prosecutorial jurisdiction, the tunnel would have to be started on the U.S. side and not yet have crossed the border into Mexico to be an attempted border tunnel, because if it has already crossed the border, it IS a border tunnel, so you don't need an attempt law. But even before such an attempt is started, and certainly after it is started, it is already a conspiracy to build a border tunnel, which is already covered by current law.

We have had no hearings in the House on these issues, so it is not clear what information we are operating on in developing this bill. The Department of Homeland Security reports that 154 border tunnels or attempted border tunnels have been found since 1990. Laura Duffy, U.S. Attorney for the Southern District of California, stated in testimony before the Senate Caucus on International Narcotics Control on June 15, 2011, that all of the tunnels discovered thus far were started in Mexico. So if it takes crossing the border to be a border tunnel, and all of them are started in Mexico, the "attempt" provision of H.R. 4119 does not seem like a very useful tool in addressing border tunnels. Conspiracy laws, which already exist, would seem to be of better use. And if existing conspiracy charges are not enough of a prosecutorial incentive, it would seem you would want to wait until the tunnel is actually being used so you can really rack up the penalties for drugs, goods or people smuggling which allows a doubling of penalties.

Duffy also stated in her testimony that in prosecuting tunnel-related crimes, the Department of Justice uses the range of drug charges under Title 21 because the drug charges carry "stiff mandatory minimum sentences and sometimes enable prosecutors to use 'career offender' sentencing enhancements." When you start doubling such drug penalties under the provisions of the current border tunnel law, you can easily get into sentences of many decades.

In addition to adding attempt and increasing the penalty for conspiracy, H.R. 4119 adds provisions for wire tap, forfeiture, and money laundering, which should always be done carefully, in my view. These are extraordinary government powers that were created and authorized to be used in extraordinary cases and circumstances, not to address ordinary crime. We have come to routinely add these authorities to deal with the crime du jour, further cluttering up an already bloated federal code with multiple, superfluous ways to charge every crime. There are no U.S. restrictions on the use of wiretaps outside the U.S. Since the tunnels are seemingly always started in Mexico, it is not clear what wiretap authorizations add to the investigative process.

We should not be decorating the criminal code with more and more pages. We ought to be simplifying the code. While I do think border tunnels are a serious problem, I believe we already have adequate laws with very harsh penalties to deal with the problem.